

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed April 19, 2007. At the time of the Office Action, Claims 1-20 were pending in this Application. Claims 11-20 were rejected and Claims 1-10 were withdrawn. Claim 14 was objected to. Claim 11 has been amended to further define various features of Applicant's invention. Claim 18 has been canceled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

#### **Claim Objections**

Claim 14 was objected to because it depends on a non-elected Claim. Applicant has amended Claim 14 and the objection is now moot.

#### **Rejections under 35 U.S.C. § 112**

Claims 11-20 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant amends Claim 11 to overcome these rejections and respectfully request full allowance of Claim 11 as amended.

#### **Rejections under 35 U.S.C. § 102**

Claims 11, 14-18 and 20 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by "Aerosolization of Epiderman Cells with Fibrin Glue for the Epithelialization of Porcine Wounds with Unfavorable Topography," *Plastic Surgery and the Cryopreservation Laboratory*, by Meir Cohen et al. ("Cohen"). Applicant amends Claim 11 and submits the cited art does not teach all elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits the art cited is

anticipatory of the amended Claims, because the cited art does not show all the elements of the amended Claims.

Claim 11 has been amended to distinctly claim the cells as comprising “autologous stem cells.” Cohen and Marshall fail to teach or suggest the utilization of “autologous stem cells.” The Examiner states that Cohen’s “epidermal cells” are “made of keratinocytes, fibroblasts, and stems cells.” (Office Action, p. 4) The Applicant respectfully disagrees. Epidermal cells do not include stem cells. Stem cells are capable of being an epidermal cell, a liver cell, or a heart cell. Cohen’s “epidermal cells” are not and do not include the claimed “autologous stem cells.” Withdrawal of the rejection is requested.

Claims 11-17 and 20 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,479,052 issued to Julian M. Marshall et al. (“Marshall”). Claim 18 was **not** rejected under 35 U.S.C. 102 over Marshall. Amended Claim 11 incorporates the limitations of non-rejected Claim 18. Applicant submits Marshall does not anticipate amended Claim 11 (old Claim 18). Withdrawal of the rejection is requested.

### **Rejections under 35 U.S.C. §103**

Claims 11-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Marshall. Claim 11 has been amended. Applicant submits Marshall does not render amended Claim 11, or its dependents, obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Claim 11 has been amended to specify that the cells being dispersed include “autologous stem cells.” The Examiner cites Marshall as disclosing: (1) “a method of dispersing living cells, wherein various types of autologous cells (including keratinocytes, fibroblasts, fertilized ova-taken as a stem cell, etc.) can be . . .” (Office Action , p. 7), and (2) “and other suitable cells (such as fertilized ova-taken herein as stem cell for its potential).” (Office Action, p. 8) Marshall discloses as follows:

Cells to be introduced onto a tissue substrate according to the invention include . . . fertilized ova . . .

(Marshall, Col. 4, lines 55 - 59) Apparently, the Examiner equates Marshall’s “fertilized ova” with the claimed “autologous stem cells.” Fertilized ova are partially derived from DNA that differs from the patient or subject. Obviously, the ova from one person is fertilized by another person; hence, the resulting “fertilized ova” which does not include the claimed “autologous stem cells” of the subject being treated by the claimed inventive method. Applicant submits that the amended claims distinguish over the cited art and requests favorable action.

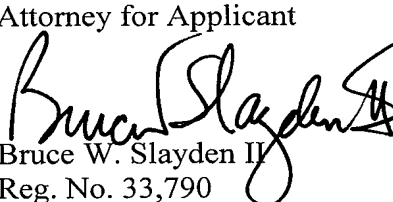
**CONCLUSION**

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant encloses a Petition for Three Month Extension of Time and authorizes the Commissioner to charge the \$510.00 extension fee to Deposit Account No. 50-2148 of Baker Botts L.L.P. Applicant believes there are no further fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2606.

Respectfully submitted,  
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Date: 9/25/2007

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